

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	
	:	
MATTHEW MORTIMER	:	NO. 97-293-01

MEMORANDUM AND ORDER

HUTTON, J.

July 14, 1999

Presently before the Court is the Defendant's Motion to Challenge Jury Venire. For the reasons stated below, the Defendant's motion is **DENIED**.

I. BACKGROUND

On July 12, 1999, voir dire was conducted in this case. The Defendant is an African-American male. The jury panel consisted of forty-five (45) prospective jurors. Of the three (3) African-American panel members, two (2) were male and one (1) was female. All three (3) African-American panel members were selected to sit on the jury. On July 13, 1999, the second day of trial, the Defendant submitted the instant motion moving the Court to dismiss the jury venire in this case.

II. DISCUSSION

The Defendant contends that the jury venire from which his jury was selected does not represent a fair cross-section of the community. The Defendant contends that jury pools in the

Eastern District of Pennsylvania have consistently under-represented African-Americans. As a result of the systemic under-representation of African-Americans on jury pools in this District, the Defendant asserts that his Sixth Amendment right to a trial by an impartial jury was violated.

The Supreme Court has determined that encompassed within the Sixth Amendment right to a trial by an impartial jury is a requirement that juries be selected through a process that represents a fair cross-section of the community. Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692, 42 L.Ed.2d 690 (1975). The Plan of the Random Selection of Grand and Petit Jurors of 1968 for the Eastern District of Pennsylvania determined how the jury venire in this case was chosen. As the third circuit stated in the United States v. Lewis, 472 F.2d 252 (3d Cir.1973):

The defendant had a right to a jury selected at random from a fair cross section of the community. However, he had no right to be tried by a particular jury which was itself a fair cross section of the community; nor did he have a right to a jury selected at random from the fairest cross-section of the community.

Id. at 255. Thus, the defendant must show that this district's jury selection process does not choose jurors that represent a fair cross-section of the community.

To establish a prima facie violation of the fair cross-section requirement, the defendant must show: (1) that the group alleged to be excluded is a 'distinctive' group in the community; (2) that the representation of this group in venires

from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and, (3) that this under representation is due to systematic exclusion of the group in the jury-selection process. Duren v. Missouri, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979); United States v. DiPasquale, 864 F.2d 271 (3d Cir.1988). Each of these three elements must be demonstrated in order for the claim to succeed. DiPasquale, 864 F.2d at 282.

The Defendant contends that this district "consistently" under represents African-Americans on jury pools. The Defendant claims that "the percentages of African-Americans on jury pools in the Eastern District of Pennsylvania compared to their population of 14.5% in that district have fallen from 13.2% in 1995 to 9.8 in 1996," and this "is an indication that such under representation is systemic." (Def.'s Mem. at 2.) To support this contention, the Defendant relies exclusively on Duren v. Missouri, 439 U.S. 357, 364, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979).

The Defendants' reliance on Duren is without merit. The Supreme Court defined systematic exclusion as exclusion "inherent in the particular jury-selection process utilized." Id. at 366, 99 S.Ct. at 669. In that case, the Supreme Court found that women were systematically excluded in the grand jury selection process in Jackson County, Missouri. Id. at 367, 99 S.Ct. at 670. The jury questionnaire at issue permitted women to fill out a paragraph

which would entitle them to an automatic exemption from jury service. Id. at 361, 99 S.Ct. at 667. Women who did not return the questionnaire were deemed to have claimed the exemption if they did not appear for their jury duty in Jackson County, although this practice was not authorized by statute. Id. at 362 & n. 14, 99 S.Ct. at 667 & n. 14.

The case before this court is distinguishable. The jury selection system in Duren actively permitted women to exempt themselves from jury service by having the women fill out the paragraph requesting an exemption. Here, the system does not permit African-Americans to exempt themselves. The Defendant does not make any specific challenge to the jury selection process used in this district.

Moreover, the Sixth Amendment does not mandate that every jury panel represent a fair cross-section of the community. See United States v. Guy, 924 F.2d 702 (7th Cir. 1991) (Defendant's observation that no African-Americans were on jury panel insufficient to establish systematic exclusion); United States v. Diaz, Cr.No. 92-78, 1993 WL 85764 (E.D. Pa. Mar.25, 1993) (finding that "the defendant's sole observation [that no Hispanics were on the jury panel] fails to show a systematic exclusion as required by Duren"). In addition, in United States v. Ortiz, 897 F.Supp. 199, (E.D. Pa. 1995) (Bartle, J.), Judge Bartle stated that:

The jury selection system utilized at the relevant time period in the United States District Court for the

Eastern District of Pennsylvania conformed to the Jury Selection and Service Act of 1968 and did not violate the Sixth Amendment to the Constitution.

Id. at 204. Similarly, this Court finds that the under representation of African-Americans on the Defendant's venire was not due to systematic exclusion of such jurors in the selection process. Accordingly, Defendant's motion to dismiss the jury venire in this case is denied.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of July, 1999, upon
consideration of the Defendant's Motion to Challenge Jury Venire,
IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

BY THE COURT:

HERBERT J. HUTTON, J.